

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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STEVEN D. HIGUERA,

Petitioner,

v.

BRIAN WILLIAMS, et al.,

Respondents.

Case No. 2:16-cv-00225-JCM-PAL

ORDER

Before the court is a *pro se* petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254, submitted by Steven D. Higuera, a Nevada state prisoner (ECF No. 1-1). He has paid the filing fee (see ECF No. 3), and therefore, his application to proceed *in forma pauperis* (ECF No. 1) shall be denied as moot. The court has reviewed the petition pursuant to Habeas Rule 4, and it shall be docketed and served on respondents.

A petition for federal habeas corpus should include all claims for relief of which petitioner is aware. If petitioner fails to include such a claim in his petition, he may be forever barred from seeking federal habeas relief upon that claim. See 28 U.S.C. §2244(b) (successive petitions). If petitioner is aware of any claim not included in his petition, he should notify the court of that as soon as possible, perhaps by means of a motion to amend his petition to add the claim.

Petitioner has also filed a motion for appointment of counsel (ECF No. 2). There is no constitutional right to appointed counsel for a federal habeas corpus proceeding. *Pennsylvania v. Finley*, 481 U.S. 551, 555 (1987); *Bonin v. Vasquez*, 999 F.2d 425, 428 (9th Cir. 1993). The decision to appoint counsel is generally discretionary. *Chaney v.*

1 *Lewis*, 801 F.2d 1191, 1196 (9th Cir. 1986), cert. denied, 481 U.S. 1023 (1987); *Bashor*
2 *v. Risley*, 730 F.2d 1228, 1234 (9th Cir. 1984), cert. denied, 469 U.S. 838 (1984).
3 However, counsel must be appointed if the complexities of the case are such that denial
4 of counsel would amount to a denial of due process and where the petitioner is a person
5 of such limited education as to be incapable of fairly presenting his claims. *See Chaney*,
6 801 F.2d at 1196; *see also Hawkins v. Bennett*, 423 F.2d 948, 950-51 (8th Cir. 1970).
7 Here, Higuera's petition appears sufficiently clear in presenting the issues that he wishes
8 to raise, and the legal issues are not particularly complex. Therefore, counsel is not
9 justified. Higuera's motion is denied.

10 **IT IS THEREFORE ORDERED** that the Clerk **shall file and ELECTRONICALLY**
11 **SERVE** the petition (ECF No. 1-1) on the respondents.

12 **IT IS FURTHER ORDERED** that the Clerk shall add Adam Paul Laxalt, Nevada
13 Attorney General, as counsel for respondents.

14 **IT IS FURTHER ORDERED** that respondents shall file a response to the petition,
15 including potentially by motion to dismiss, within **ninety (90) days** of service of the
16 petition, with any requests for relief by petitioner by motion otherwise being subject to the
17 normal briefing schedule under the local rules. Any response filed shall comply with the
18 remaining provisions below, which are entered pursuant to Habeas Rule 5.

19 **IT IS FURTHER ORDERED** that any procedural defenses raised by respondents
20 in this case shall be raised together in a single consolidated motion to dismiss. In other
21 words, the court does not wish to address any procedural defenses raised herein either
22 *in seriatim* fashion in multiple successive motions to dismiss or embedded in the answer.
23 Procedural defenses omitted from such motion to dismiss will be subject to potential
24 waiver. Respondents shall not file a response in this case that consolidates their
25 procedural defenses, if any, with their response on the merits, except pursuant to 28
26 U.S.C. § 2254(b)(2) as to any unexhausted claims clearly lacking merit. If respondents
27 do seek dismissal of unexhausted claims under § 2254(b)(2): (a) they shall do so within
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1 the single motion to dismiss not in the answer; and (b) they shall specifically direct their
2 argument to the standard for dismissal under § 2254(b)(2) set forth in *Cassett v. Stewart*,
3 406 F.3d 614, 623-24 (9th Cir. 2005). In short, no procedural defenses, including
4 exhaustion, shall be included with the merits in an answer. All procedural defenses,
5 including exhaustion, instead must be raised by motion to dismiss.

6 **IT IS FURTHER ORDERED** that, in any answer filed on the merits, respondents
7 shall specifically cite to and address the applicable state court written decision and state
8 court record materials, if any, regarding each claim within the response as to that claim.

9 **IT IS FURTHER ORDERED** that petitioner shall have **forty-five (45) days** from
10 service of the answer, motion to dismiss, or other response to file a reply or opposition,
11 with any other requests for relief by respondents by motion otherwise being subject to the
12 normal briefing schedule under the local rules.

13 **IT IS FURTHER ORDERED** that any additional state court record exhibits filed
14 herein by either petitioner or respondents shall be filed with a separate index of exhibits
15 identifying the exhibits by number. The CM/ECF attachments that are filed further shall
16 be identified by the number or numbers of the exhibits in the attachment.

17 **IT IS FURTHER ORDERED** that any additional state court record exhibits filed
18 herein by either petitioner or respondents shall be filed with a separate index of exhibits
19 identifying the exhibits by number. The CM/ECF attachments that are filed further shall
20 be identified by the number or numbers of the exhibits in the attachment. The hard copy
21 of any additional state court record exhibits shall be forwarded – for this case – to the staff
22 attorneys in Reno.

23 **IT IS FURTHER ORDERED** that petitioner's application to proceed *in forma*
24 *pauperis* (ECF No. 1) is **DENIED** as moot.

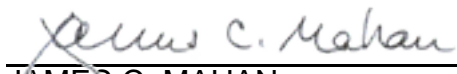
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1 **IT IS FURTHER ORDERED** that petitioner's motion for appointment of counsel
2 (ECF No. 2) is **DENIED**.

3 DATED: 9 September 2016.

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5 JAMES C. MAHAN
6 UNITED STATES DISTRICT JUDGE
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